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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,117	07/15/2003	Robert A. Matousek	12618	8636

26637 7590 01/27/2006

CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

ADAMS, GREGORY W

ART UNIT PAPER NUMBER

3652

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/620,117	MATOUSEK ET AL.	
	Examiner	Art Unit	
	Gregory W. Adams	3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| ✓ 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)           | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 21, 2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5, 7, 11-17 rejected under 35 U.S.C. 102(b) as being anticipated by Behnke et al. (US 2002/0083695).

With respect to claim 1-5, 7 & 11 Behnke et al. discloses an unloading conduit comprising a vertical conduit 3 having a vertical axis 10 and a horizontal axis 15 at a hinge joint and a horizontal conduit 3. Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, Behnke's vertical axis and horizontal axis are certainly capable of permitting "retracting of said horizontal conduit

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into a storage position". It is noted that although Behnke does not disclose a grain tank, a grain tank does not affect the function of an unloading conduit and is subsequently afforded no patentable weight.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (US 6,361,435) in view of Strubbe (US 4,765,190), Pakosh (US 4,907,402).

Yamamoto et al. discloses a conveyor 82b to unloading assembly, unloading conduit 83 having a horizontal conduit, and does not disclose a loop conveyor. Strubbe discloses that it is well known in the art to use loop conveyors 12 to elevate grain to a conduit assembly 40. C4/L18-25. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yamamoto's elevator to include a loop conveyor, as per the teachings of Strubbe, as is well known in the art.

Pakosh teaches an unloading conduit having a horizontal conduit that rests on a grain tank such that swiveling permits crop discharge outside a combine to a loading vehicle which may be operated to receive crop from the unloading chute on either side of a combine. Abs. Therefore, it would have been obvious to one having ordinary skill in

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the art at the time the invention was made to modify Yamamoto's apparatus to include a horizontal conduit that rests on a combine tank, as per the teachings of Pakosh, such that it may be swiveled into and out of service depending on whether unloading is desired.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Behnke et al. (US 2002/0083695) in view of Pakosh (US 4,907,402) (previously cited).

With respect to claim 10, Behnke et al. discloses a conduit 6 having a vertical axis and a horizontal axis and a horizontal conduit, and does not disclose an auger. Pakosh discloses that it is well known in the art to use grain augers within an unloading conduit assembly. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Behnke's unloading conduit assembly to include an auger, as per the teachings of Pakosh, as is customer within the art.

#### ***Allowable Subject Matter***

Claims 6, 9 are allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA

  
EILEEN D. LILLIS  
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TECHNOLOGY CENTER 3600